

REMARKS

Applicants have amended claim 49 to clarify that the active component in the immunological vaccine is formed by PDT-treated cells or fragments thereof or a supernatant thereof. Support for this amendment is found e.g., on pages 16- 18.

Applicants have added new claims 82 and 83.

Claim 82 states that the immunological vaccine comprises antigen presenting cells. Such cells are not PDT-treated cells but rather process antigens from damaged and dying cells. Support for this claims is found e.g., on page 15, lines 21 to 31.

Claim 83 states that the immunological vaccine consists of a "supernatant of PDT-treated cells. " Support for this claim is found in original claim 1 as well as page 10, lines 15-16, page 15, lines 9-12, Example 2 and Figure 2.

Claims 49-52 stand rejected under 35 U.S.C. §102(b) for purportedly being anticipated by Brasseur et al. (2000) *Photochem. and Photobiol.* ("Brasseur") already of record. Applicants disagree.

Applicants' claims 49-52 and new claims 82 and 83 claim an immunologic vaccine comprising, as an active component, PDT- treated cells, cell fragments or supernatant and a pharmaceutically acceptable carrier. Vaccines are compositions that induce an immune response and typically comprise attenuated or dead antigens, pharmaceutical carriers and may contain an adjuvant. Applicants' amended claim 49 states that the active component in the immunological vaccine is formed by PDT-treated cells or fragments thereof or a supernatant thereof. Thus the active components of claims 49-52 are dead cells, dead cell fragments or supernatant thereof. Brasseur does not disclose immunologic vaccines but rather compositions of living cells where the active

components in Brasseur are the living cells. As such Brasseur does not teach the invention as claimed in claims 49-52 or new dependent claims 82 and 83.

In view of the amendments to the claims and the foregoing remarks request that the Examiner reconsider and withdraw the rejection of claims 49-52 under 35 U.S.C §102(b) in view of Brasseur.

Claims 49-52 stand rejected under 35 U.S.C. § 102(b) for purportedly being anticipated by Roy et al. (2000) *Blood* ("Roy"). Applicants disagree. As discussed above Applicants claims relate to immunologic vaccines comprising an active component wherein the active component in the immunological vaccine is formed by PDT-treated cells or fragments thereof or a supernatant thereof, and a pharmaceutically acceptable carrier. Thus the active components in the claimed vaccines are dead cells, dead cell fragments or a supernatant thereof. Vaccines are compositions that induce an immune response, and typically comprise attenuated or dead antigens, pharmaceutical carries and may contain an adjuvant. In contrast, Roy does not describe vaccines, but rather compositions wherein the active components are the living cells. As such Roy does not teach the invention as claimed.

In view of the amendments to the claims and the foregoing remarks Applicants request that the Examiner reconsider and withdraw the rejection of claims 49-52 under 35 U.S.C § 102(b) in view of Roy.

Claims 49-52 stand rejected under 35 U.S.C. § 102(b) for purportedly being anticipated by WO 01/24824. Applicants disagree.

As discussed above Applicants claims relate to immunologic vaccines comprising an active component wherein the active component is formed by PDT-treated cells or fragments thereof or the supernatant thereof, and a pharmaceutically acceptable carrier. Thus the active components in the claimed

vaccines are dead cells, dead cell fragments or a supernatant thereof. In contrast, WO 01/24824 does not disclose immunologic vaccines, but rather compositions wherein the active components, like Brasseur and Roy, are living cells. As such WO 01/24824 does not teach the invention as claimed.

In view of the amendments to the claims and the foregoing remarks Applicants request that the Examiner reconsider and withdraw the rejection of claims 49-52 under 35 U.S.C §102(b) in view of WO 01/24824.

Claims 49-52 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting ("OTDP") as being unpatentable over claim 25 of copending application no. 10/969,011. Applicants disagree.


MPEP § 804(I)(B) indicates that a provisional OTDP rejection over another application should be made unless the provisional double patenting rejection is the only rejection remaining in at least one of the applications. In the present instance, the other application 10/969,011 was filed after the present application. Because the claims in the present application are otherwise allowable, the Office should withdraw the provisional OTDP rejection in the present case and allow it to issue.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 029049.57806US).

Respectfully submitted,

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